

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION

GEOFFREY CROWTHER,
Plaintiff,

v.

CSX TRANSPORATION, INC. and
CONSOLIDATED RAIL CORP,
Defendant

AND

GEOFFREY CROWTHER,
Plaintiff,

v.

CSX TRANSPORTATION, INC.

3:09-cv-10334-MAP

3:09-cv-11467-MAP

**DEFENDANTS' EMERGENCY MOTION TO COMPEL PLAINTIFF'S APPEARANCE
AT AUDIO-VISUAL DEPOSITION OF ROY SQUIRES**

Defendants CSX Transportation, Inc. (“CSXT”) and Consolidated Rail Corporation (“Conrail”) hereby request that this Honorable Court order Plaintiff’s counsel to appear at the duly-noticed audio-visual deposition of former CSXT employee Roy Squires. The deposition is currently scheduled to take place on Thursday, December 30, 2010 at the office of Defendants’ counsel in Quincy, Massachusetts. (See Notice of Deposition of Roy Squires, a copy of which is attached as Exhibit A.)

Mr. Squires is a retired, former employee of Defendants. As such, he is not subject to Defendants’ control. He is a crucial fact witness as he was Plaintiff’s immediate supervisor for much of the time Plaintiff was employed by Defendant CSXT, and therefore has first-hand knowledge of Plaintiff’s work activities. On Wednesday, December 23, 2010, Defendants’ counsel received notice, for the first time, that Mr. Squires will be out of the country on vacation

between January 2, 2011 and January 16, 2011 and will not therefore be available to testify live at trial.

Immediately after learning about Mr. Squires' travel plans, Defendants' counsel contacted Plaintiff's counsel and served Plaintiff's counsel with a notice of Mr. Squires' audio-visual deposition. (Ex. A.) Mr. Squires has agreed to appear at counsel's office for the deposition. Plaintiff's counsel has communicated to Defendants' counsel that he is not available. Defendants' counsel has attempted to contact Plaintiff's counsel several times to determine a mutually convenient time for the deposition and/or to arrange for Plaintiff's counsel participation via telephone or videoconference. See correspondence to Plaintiff's counsel, copies of which are attached as Exhibit B. To date, Plaintiff's counsel has not responded to the correspondence nor has Plaintiff filed a motion for protective order.

Defendants note that Plaintiff's counsel, between November 30, 2010 and December 21, 2010, conducted six (6) audio-visual depositions of his expert witness physicians. In the spirit of cooperation and fair play, Defendants' counsel arranged his schedule in order to attend these depositions, recognizing Plaintiff's counsel's need to procure the testimony of his experts, who all were apparently unavailable to appear live at trial. Yet now Plaintiff's counsel is apparently unwilling to extend the same courtesies.

Defendants are willing to make reasonable arrangements if Plaintiff's counsel is unable to travel to Massachusetts, such as video or teleconferencing, to allow Plaintiff's counsel to "attend" Mr. Squires' deposition remotely. Defendants simply will not be afforded a fair trial if they are unable to present the jury with Mr. Squires' testimony.

Defendants therefore request that Plaintiff's counsel be ordered to appear at Mr. Squires' duly-noticed audio-visual deposition, either in-person or by video or teleconferencing.

Alternatively, Defendants request that this Honorable Court enter an order that Mr. Squires' audio-visual deposition will be presented to the jury, even if Plaintiff's counsel fails to appear. If the Court refuses to entertain either of these alternative requests, then Defendants respectfully request that trial be postponed for enough time to allow Mr. Squires to appear at trial.

Respectfully submitted,
Defendants, CSX Transportation, Inc., and
Consolidated Rail Corporation,
By their attorneys,

/s/ Michael B. Flynn
Michael B. Flynn, Esq., BBO# 559023
mbflynn@flynnwirkus.com
Heather M. Gamache, BBO# 671898
hgamache@flynnwirkus.com
Flynn & Wirkus, P.C.
400 Crown Colony Drive, Suite 200
Quincy, MA 02169
(617) 773-5500

DATED: December 28, 2010

G:\F & A\CASE FILES\CSX OCCUPATIONAL\Worn\Crowther - WORN - 61-123\Trial\MTC Appearance at Deposition of Roy Squires - 12.27.10.doc

CERTIFICATE OF SERVICE

I, Michael B. Flynn, attorney for Defendants CSXT and Conrail hereby certify that I have served true and correct copies of the foregoing *Motion to Compel* upon all counsel of record electronically via *CM/ECF* this 27th day of December, 2010.

/s/ Michael B. Flynn
Michael B. Flynn, Esq.